



ALAN WILSON
ATTORNEY GENERAL

May 13, 2015

The Honorable T. Scott Beck
South Carolina Worker's Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Dear Commissioner Beck:

This Office received your request for an opinion. You explain that R. Michael Campbell, II was appointed by Governor Haley as interim commissioner on the South Carolina Workers' Compensation Commission and that he also is a deputy law enforcement officer with the South Carolina Department of Natural Resources. You question whether service as a workers' compensation commissioner and a commissioned law enforcement officer violates the prohibition against dual office holding. You also inquire as to whether a workers' compensation commissioner's duties under the Code of Judicial Conduct prohibit service as a deputy law enforcement officer.

LAW/ANALYSIS:

The South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention." S.C. Const. art. IV § 3.

The South Carolina Supreme Court explains that an "office" for dual office holding purposes is:

"One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). "In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that "[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public." Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). "The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority..." 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010). “Other relevant considerations [as to whether a position is a public office] include: ‘whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.’” See Op. S.C. Atty. Gen., June 17, 2013 (2013 WL 3243063) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61,62 (1980)).

The South Carolina Workers’ Compensation Commission was created by section 42-3-10 of the South Carolina Code. See S.C. Code Ann. § 42-3-10 (1976 Code, as amended). “The commission shall consist of seven members appointed by the Governor with the advice and consent of the Senate for terms of six years and until their successors are appointed and qualify.” S.C. Code Ann. § 42-3-20 (1976 Code, as amended). The commissioners shall have an annual salary of “eighty-five percent of the salary paid to the circuit judges of the State.” S.C. Code Ann. § 42-3-40 (1976 Code, as amended). The Commission is given a number of duties: to hear and determine all contested cases, to conduct informal conferences when necessary, to approve settlements, to hear applications for full commission reviews, and to handle such other matters as may come before the department for judicial disposition (S.C. Code Ann. § 42-3-20 (1976 Code, as amended)); to promulgate all regulations relating to the administration of the workers’ compensation laws ((S.C. Code Ann. § 42-3-30 (1976 Code, as amended)); to subpoena witnesses, administer oaths, and examine or cause to be examined books and records of the parties relating to the questions in dispute ((S.C. Code Ann. § 42-3-140 (1976 Code, as amended)); to order a person to appear before the commission or produce evidence and to punish as contempt a failure to obey such order ((S.C. Code Ann. § 42-3-150 (1976 Code, as amended)); to impose sanctions for failure to obey an order ((S.C. Code Ann. § 42-3-175 (1976 Code, as amended)); and to determine all workers’ compensation questions not agreed upon by the parties ((S.C. Code Ann. § 42-3-180 (1976 Code, as amended)).

Since the Legislature created the position of workers’ compensation commissioner and provided for the duties, tenure, and salary of the commissioners, it is our opinion that a commissioner is a public officer.

You question whether a deputy law enforcement officer with the South Carolina Department of Natural Resources (DNR) holds an office. You state in your letter that a deputy law enforcement officer with DNR is an office commissioned by the Governor. In Op. S.C. Atty. Gen., September 17, 2003 (2003 WL 22378702), we determined the following:

Based upon the Court's analysis in Richardson v. Town of Mt. Pleasant, supra [350 S.C. 291, 566 S.E.2d 523 (2002)], it appears that DNR officers who are commissioned by the Governor fall within the exemption for “constables” contained in Article XVII, § 1A. Thus, any DNR officer who is in such category and who holds another office would not be dual office holding in contravention of the Constitution.

We believe that Mr. Campbell is not contravening the Constitutional prohibition against dual office holding because while a workers’ compensation commissioner exercises the sovereign power of the State, a commissioned law enforcement officer with DNR is a constable and thus is exempt from dual office holding.

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Your next question is whether a workers' compensation commissioner's duties under the Code of Judicial Conduct prohibit service as a deputy law enforcement officer with DNR. S.C. Code Ann. § 42-3-250 (1976 Code, as amended) provides that workers' compensation commissioners "are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. . ."

We defer to the Advisory Committee on Standards of Judicial Conduct on matters of judicial ethics and you may wish to contact it. However, we believe you are asking if it would be a conflict of interest for a workers' compensation commissioner to also serve as a deputy law enforcement officer with DNR. In Op. S.C. Atty. Gen., September 1, 2009 (2009 WL 3208462), we advised "against serving simultaneously as a State constable and a part-time magistrate, since doing so would present at least the appearance of a conflict of interest, if not an actual conflict." We based this upon case law and our prior opinions. See O'Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184 (1945) ("[e]very public officer is bound to perform the duties of his office honestly, faithfully, and to the best of his ability, in such manner as to be above suspicion of irregularities, and to act primarily for the benefit of the public"); Op. S.C. Atty. Gen., January 25, 2006 (2006 WL 269611) ("a magistrate must maintain the appearance of being neutral and detached"); Op. S.C. Atty. Gen., July 25, 2002 (2002 WL 1925752) ("[p]ublic employees must be above reproach and avoid even the appearance of a conflict of interest in carrying out their duties").

Based upon our September 1, 2009 opinion, this Office believes that service as a workers' compensation commissioner and as a deputy law enforcement officer with DNR would present the appearance of a conflict of interest.

CONCLUSION:

Although service as a workers' compensation commissioner and a deputy law enforcement officer with DNR does not contravene the State Constitutional prohibition against dual office holding, it is our opinion that it has the appearance of a conflict of interest.

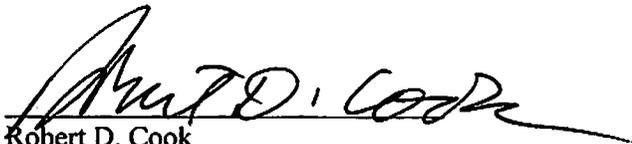
Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General